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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,276	12/31/2001	Ronald L. Edens	17,696	6825

23556 7590 05/03/2004

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/037,276	Applicant(s) EDENS ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 22-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 22-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/20/04, 3/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 2, 5 – 10, 13 – 17, 27 – 28 and 31 – 35 are rejected under 35 U.S.C. 102(e) as being anticipated by McFall et al. (US 6,432,096).

With respect to claim 1, Mc Fall et al. (hereinafter McFall) discloses an absorbent article comprising a fluid permeable cover (42), a liquid impermeable baffle (38) and an absorbent situated between the cover and the baffle (44), the absorbent article having a principal longitudinal axis and a principal transverse axis and being configured to provide a labial pad for disposition within the vestibule of a female wearer (col. 4, lines 22 – 56), the absorbent having a maximum longitudinal length of no greater than about 100 mm extending from a first transverse end to a spaced apart second transverse end (col. 7, lines 10 – 13), a body –facing surface of the absorbent having a minimum longitudinal length that lies generally along the principal longitudinal axis and is less than the maximum longitudinal length (58 as shown in figure 1), a maximum width of no greater than about 70mm (col. 7, lines 15 – 17), a widest portion, a width at the widest

portion, a narrowest portion, a width at the narrowest portion which is smaller than said width at the widest portion, a maximum thickness of no greater than about 10 mm (col. 7, lines 26 – 32), first and second end regions and a central region disposed between the first and second end regions and first and second spaced apart longitudinal sides, the longitudinal sides together with the transverse ends generally forming the periphery of the absorbent, wherein the widest portion of the absorbent is not situated in the central region, and the article is folded parallel to the longitudinal axis prior to disposition within the vestibule of the wearer as set forth in col. 6, lines 29 – 40, col. 13, lines 57 – 59 and figures 1, 4 – 5 and 9.

McFall discloses in col. 2, lines 29 – 33 that the main body portion of the article may be any shape including a triangular shape, which would provide the article with a widest portion of the article in a region not situated in the central region. This configuration also provides the width at a narrowest portion (considered the tip of the triangle) which is smaller than the width at the widest portion (considered the base of the triangle) and also provides the end regions, the longitudinal sides and transverse ends that form the periphery.

With reference to claim 2, the examiner contends that the base of the triangular shaped absorbent article may be considered the widest portion and can also be considered (based on the general knowledge of a triangular shape) to be situated in the first end region.

Regarding claims 5, 13, 16, 31 and 33 – 34, see col. 9, lines 24 – 54 and figures 1 and 4.

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Regarding claims 6 and 7, McFall discloses an absorbent article wherein the cover and the baffle have peripheries which extend outward beyond the periphery of the absorbent and are at least partially joined to form an edge as set forth in col. 11, lines 54 – 65.

As to claims 8, 17 and 35, McFall discloses the absorbent further comprising a superabsorbent polymer as set forth in col. 9, line 63 to col. 10, line 14.

Regarding claims 9 – 10 and 27 – 28, see the rejection of claim 1.

As to claim 14, McFall discloses the absorbent comprising a fluid permeable cover as set forth in col. 8, lines 6 – 25.

With reference to claim 15, McFall discloses the cover enclosing the absorbent as set forth in figure 2.

As to claim 32, McFall discloses an absorbent article further comprising a liquid impermeable baffle as set forth in col. 10, lines 46 – 65.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 – 4, 11 – 12, 18, 22 – 26 and 29 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McFall et al. (US 6,432,096).

The difference between McFall and claim 3 is the provision that the narrowest portion of the absorbent article is situated in the central region of the absorbent and a second widest portion of the absorbent has a width and is situated in the second end region of the absorbent, and said width at the narrowest portion is smaller than said width of the second widest portion of the absorbent.

McFall discloses that the main body portion of the article can be any suitable configuration as set forth in col. 5, lines 29 – 30.

It would have been obvious to one of ordinary skill in the art to modify the configuration of the article provided by McFall to include a dog boned or hourglass shaped configuration because it is well known in the art that either of these configurations are routinely used to provide articles that better conform to the user's anatomy. Either the dog bone or hourglass configuration will provide the structure as claimed by the applicant.

With reference to claims 4, 12 and 30, the examiner contends that either the dog bone or hourglass configuration will provide the structure as claimed by the applicant.

Regarding claims 11 and 29, see the rejection of claim 3.

With reference to claim 18, see the rejection of claims 1 and 3.

With respect to claim 22, McFall discloses an absorbent that has an upper surface and a fluid permeable cover residing on the upper surface of the absorbent as set forth in col. 9, lines 24 – 25.

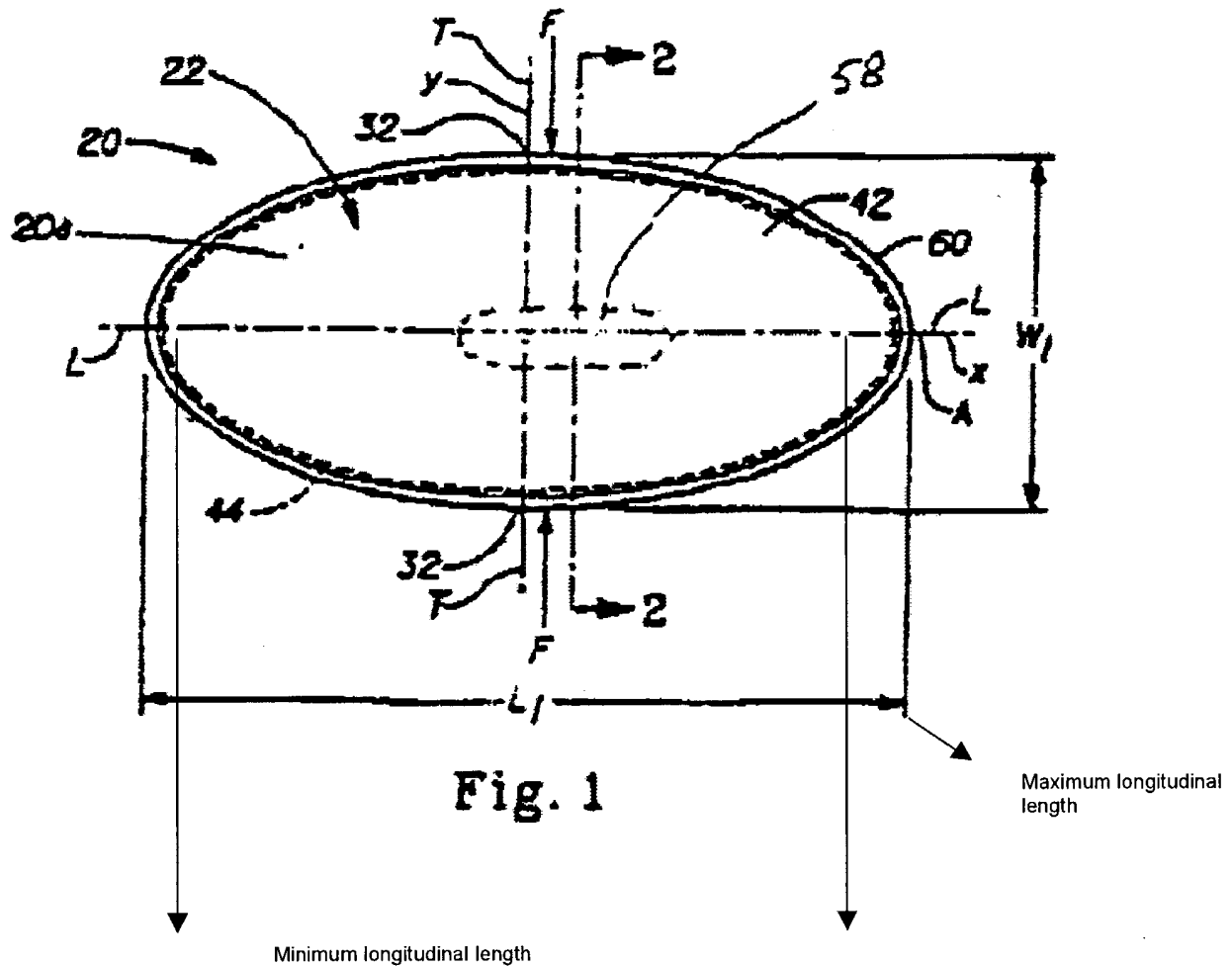
With respect to claims 23 – 25, see figure 2.

As to claim 26, McFall discloses the absorbent further comprising a superabsorbent polymer as set forth in col. 9, line 63 to col. 10, line 14.

Response to Arguments

Applicant's arguments filed February 9, 2004 have been fully considered but they are not persuasive.

In response to the applicant's argument that McFall does not teach a labial pad comprising an absorbent with the claimed maximum and minimum lengths, the examiner disagrees. McFall discloses an interlabial device with a length between 75mm and 105mm (which is about 100 mm as claimed) in col. 7, lines 10 – 13. The length is considered the maximum length because McFall has disclosed this as the length of the device. If the device meets the claimed length, then the absorbent would also meet the claimed length since McFall discloses that the absorbent core has the same general shape as the overall interlabial device as set forth in col. 9, lines 61 – 62. As shown in figure 1 below, a body facing surface of the absorbent has a minimum longitudinal length that lies generally along the longitudinal axis and is less than the maximum longitudinal length.



In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does

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not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

For example, the knowledge of an hourglass configuration is known to McFall at the time through his incorporation of Vukos et al. (US 5,484,429) in col. 1, lines 59 – 60. Vukos teaches the use of an hourglass shape in combination with an interlabial device as set forth in figure 4.

Additionally, the examiner notes that McFall discloses that any suitable configuration, including a combination of ovoid, elliptical, trapezoidal, rectangular, triangular and/or diamond –shaped is suitable for the main body portion of the interlabial device (col. 5, lines 29 – 40). The applicant seems to interpret such language as being representative of the shape of the sanitary napkin that may be used in combination with the absorbent interlabial device, however, the examiner disagrees. The language at col. 22, lines 22 – 61 of McFall talks about a system in which the absorbent interlabial device may be combined with a sanitary napkin to aid in reducing soiling. There is no mention in this section of suitable configurations for the absorbent interlabial device or the sanitary napkin. However, at col. 5, lines 29 – 40, McFall discloses the suitable configurations with specific reference to the main body portion (22) of the absorbent interlabial device. And, as previously noted, McFall has already disclosed that the absorbent has the same overall shape as the device as set forth in col. 9, lines 61 – 62.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
April 26, 2004


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